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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND DONALD CHESTER, JR.,

Defendant and Appellant.

2d Civil No. B224150
(Super. Ct. No. F354045)
(San Luis Obispo County)

Raymond Donald Chester appeals from an order denying his petition for conditional release to a more appropriate treatment facility under Welfare and Institutions Code, section 6608.¹ He contends that the trial court abused its discretion when it determined that his petition was frivolous and dismissed it. We affirm.

FACTS

In January 2009, appellant was committed as an sexually violent predator (SVP). (§ 6604.) One year later, he petitioned the court for conditional release under section 6608. He sought transfer to "an appropriate community

¹ All statutory references are to the Welfare and Institutions code unless otherwise stated.

treatment program," on the ground that the state facility in which he was committed could not provide appropriate treatment.

In support of the petition for conditional release, three psychologists declared that appellant suffered from a brain injury in the 1980's for which the present facility could not provide appropriate treatment. They had examined appellant between 2004 and 2006. They declared that he did not suffer from pedophilia and that his inability to control his impulses resulted from his brain injury and other, non-qualifying, disorders. They did not offer any opinions on his dangerousness or the likelihood that he would reoffend, in any treatment setting.

In February 2010, the Department of Mental Health submitted an evaluation and report which concluded that appellant continued to suffer from pedophilia and that the community's safety could not be assured if he were in a less restrictive treatment setting. The evaluating psychologist met with appellant in February 2010 for over an hour, and reviewed his medical and psychiatric records. She reported that appellant's condition had not changed since his commitment. She declared that he met all of the criteria for pedophilia based on his history of committing sexual offenses which included sexual victimization of three children and an elderly man over a period of ten years. She declared that his mental disorder continued to make him a danger to the health and safety of others and that it was likely he would engage in sexually violent criminal behavior. She declared that he was not currently enrolled in sex offender treatment. Appellant's counsel represented that appellant was on the waiting list for treatment.

The trial court reviewed the petition as required under section 6608, subdivision (a), to determine whether it was frivolous and should be dismissed or whether it should be set for a hearing. The court determined that the petition was frivolous because none of appellant's psychologists asserted that he was not dangerous. Accordingly, the court dismissed the petition without hearing. (§ 6608, subd. (a).)

DISCUSSION

Appellant contends that the trial court abused its discretion when it determined that his petition for conditional release was frivolous. We disagree.

Section 6608 permits a person who has been committed as an SVP to petition the court for conditional release or unconditional discharge, without the recommendation or concurrence of the Director of Mental Health. (Welf. & Inst. Code, § 6608, subd. (a).) The goal of the statute is to ensure that only those individuals who continue to meet the SVP criteria will remain involuntarily committed. (*People v. McKee* (2010) 47 Cal.4th 1172, 1192.)

If the petition is not frivolous, the trial court must appoint counsel and an expert, and must set the matter for a hearing. (§§ 6605, subd. (a), 6608, subd. (b); *People v. McKee, supra*, 47 Cal.4th at p. 1193.) If the petition is frivolous, the court must deny it without a hearing. (§ 6608, subd. (a).)

If the petition for conditional release proceeds to a hearing, the court must determine whether the petitioner would be dangerous under supervision in the community. Specifically, the court determines "whether the person committed would be a danger to the health and safety of others in that it is likely that he or she will engage in sexually violent criminal behavior due to his or her diagnosed mental disorder if under supervision and treatment in the community." (§ 6608, subd. (d).) The standards for conditional and unconditional release are not the same. (*People v. Collins* (2003) 110 Cal.App.4th 340, 348-349.) Unconditional release may be granted under section 6608 only after a year of conditional release and a subsequent hearing and determination concerning danger without supervision. (§ 6608, subd. (d).)²

² If the person would not be a danger on conditional release, the court is required to place them "with an appropriate forensic conditional release program operated by the state for one year." (§ 6608, subd. (d).) At the conclusion of that year, the court may grant unconditional release if it determines that the person is not a danger to others and that it is not likely they "will engage in sexually violent

The order dismissing the petition for conditional release is appealable. (Code Civ. Proc., § 904, subd. (a)(1).) SVP proceedings are civil in nature and the provisions of the Code of Civil Procedure apply. (*People v. Collins, supra*, 110 Cal.App.4th at p. 348.) A civil judgment is final, and appealable, when it terminates the litigation and leaves no further action to be taken by the court. (*Dana Point Safe Harbor Collective v. Superior Court* (2010) 51 Cal.4th 1, 5.) An order dismissing an SVP's petition for conditional release is a final adjudication of the petition and leaves no further action to be taken by the court. The petitioner may only renew his or her request for release through a new petition, filed after a one-year waiting period and demonstrating a change of condition. (§ 6608, subs. (a) & (h).) The dismissal therefore constitutes a "judgment," and is appealable under section 904.1, subdivision (a)(1) of the Code of Civil Procedure. (See, e.g., *People v. Superior Court (Ghilotti)* (2002) 27 Cal.4th 888, 900, fn. 4 [dismissal of a petition for involuntary civil commitment as a SVP under section 6602 is an appealable final judgment].)

We review for abuse of discretion a trial court's determination that a petition brought under section 6608 is frivolous. (*People v. Collins, supra*, 110 Cal.App.4th at p. 349 [§ 6608 petition for conditional release]; *People v. Reynolds* (2010) 181 Cal.App.4th 1402, 1408 [§ 6608 petition for unconditional release].)

A petition is frivolous if it indisputably has no merit. (*People v. McKee, supra*, 47 Cal.4th at p.1192.) If the petition has some merit, the statute requires a hearing. (*People v. Collins, supra*, 110 Cal.App.4th at p. 350.) In *Collins*, the petition had some merit and a hearing was required because the committed person offered proof that he was not likely to engage in sexually violent behavior if he was placed under supervision and treatment in the community. On the other hand, "if the defendant's [petition] is completely without merit, a hearing

criminal behavior." (*Ibid.*) Unconditional release is also possible at the annual review. (§ 6605.)

should be denied regardless whether admissible evidence supports the position."
(*Ibid.*)

Here, the court did not abuse its discretion when it denied a hearing because the petition was completely without merit. The petition did not address the central requirement for conditional release: absence of danger to others under supervision and treatment in the community. A court may grant conditional release only if it "determines that the committed person would not be a danger to others due to his or her diagnosed mental disorder while under supervision . . . in the community." (*People v. Collins, supra*, 110 Cal.App.4th at 6 p. 347.)

Appellant's petition offered no proof that he would not be a danger to the health and safety of others or that he was unlikely to engage in sexually violent criminal behavior if he were under supervision and treatment in the community. (§ 6608, subd. (a).) Even if the trial court accepted as true all of the statements in the declarations of appellant's three psychologists, nothing would have supported a finding that appellant would not be a danger to others or that it was unlikely that he would engage in sexually violent criminal behavior if he were under supervision and treatment in the community. The psychologists only asserted that he was not getting appropriate treatment where he was and that the State's pedophilia diagnosis was wrong. These are not grounds for conditional release under section 6608.

Appellant argues that a different standard should apply, because he did not seek unconditional release into the community; he only sought conditional release to a more appropriate treatment facility. But section 6608 only authorizes conditional release to "an appropriate forensic conditional release program operated by the state" and such release is only permitted if it would not pose danger to others. (§ 6608, subd. (d).) Appellant and his psychologists did not assert that any state forensic program could offer more appropriate treatment. More importantly, they did not refute the State's evidence that he continued to be a danger to others and was likely to engage in sexually violent criminal behavior, wherever he might be treated.

Appellant also contends that conditional release was necessary for his own safety, because he was attacked during his commitment. The grounds for conditional release are statutory and do not include the personal safety of the committed person. (§ 6608, subd. (d).)

DISPOSITION

The order appealed from is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Barry T. LaBarbera, Judge
Superior Court County of San Luis Obispo

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